IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

TUESDAY, THE 11TH SEPTEMBER 2007 / 20TH BHADRA 1929

Bail Appl..No. 5460 of 2007()

[CRIME NO.804/07 OF KARUNAGAPPALLY POLICE STATION]

PETITIONER/ACCUSED

BALAGOPAL @ AMMANANPILLAI,
S/O KRISHNA PILLAI, GOKULAM,
MUZHANGODI, THODIYORR P.O.,
KARUNAGAPPALLY.

BY ADV. SRI.T.GOPALAKRISHNAN

RESPONDENTS: COMPLAINANT

STATE OF KERALA, REPRESENTED BY THE
SUB INSPECTOR OF POLICE, KARUNAGAPPALLY, THROUGH
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

BY PUBLIC PROSECUTOR SRI.S.U.NAZER

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 11/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J.

B.A.No.5460 of 2007

Dated this the 11th day of September 2007

O R D E R

Application for anticipatory bail. The petitioner faces allegations under the Kerala Abkari Act. He was allegedly found to be in possession of six bottles of illicit liquor each containing 2.25 litres. Seeing the police party, he allegedly abandoned the article and took to his heels. The crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. He had purchased the liquor from the outlet of the Beverages Corporation. In these circumstances, he has not committed any offences punishable under Section 55 of the Kerala Abkari Act. At worst he can be held punishable for possessing licit liquor in excess of the prescribed quantity which can be held to be punishable under Section 63 of the Kerala Abkari Act. In these circumstances, the petitioner may be granted anticipatory bail , it is prayed.

2. The learned Public Prosecutor opposes the application. Absolutely no material has been produced to cover the entire quantity of liquor seized from the petitioner. Even Annexure A bills which are sought to be produced now do not cover the entire quantity of the contraband article seized from the possession of the petitioner. The seizure mahazer does not show that security stickers of the Beverages

Corporation were available on the liquor seized. The conduct of the petitioner of not explaining to the police that he has documents to show the licit possession is also in these circumstances relevant, submits the learned Public Prosecutor. The learned Public Prosecutor in these circumstances submits that the decision in Sabu v. State of Kerala (2003(2) KLT 173)] cannot be of help to the petitioner in this context.

3. I find merit in the opposition by the learned Public Prosecutor. There is nothing to show that the quantity seized from the possession of the petitioner was licit liquor purchased from the Beverages Corporation. Annexure A document does not cover the entire quantity of liquor seized from the possession of the petitioner, at any rate. I am not, in these circumstances, satisfied that it is not necessary to issue any direction under Section 438 Cr.P.C in favour of the petitioner. It is for the petitioner to appear before the investigating officer or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

4. In the result, this petition is dismissed. Needless to say, if the petitioner surrenders before the investigating officer or the learned Magistrate and applies for bail, after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass appropriate orders on merits, in accordance with law and expeditiously.

(R.BASANT, JUDGE)

jsr

R.BASANT, J.

CRL.M.CNo.

ORDER

21ST DAY OF MAY2007